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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE APPLE & AT&TM ANTITRUST) Master File No. C 07-05152 JW
LITIGATION)

HERBERT H. KLIEGERMAN on behalf of
himself and others similarly situated,

Plaintiff,

v.

APPLE INC. and AT&T MOBILITY LLC,

Defendants.

) File No. C 08-948 JSW

) **AFFIDAVIT OF ALEXANDER H.
SCHMIDT IN SUPPORT OF PLAINTIFF
KLIEGERMAN'S CROSS-MOTION
FOR APPOINTMENT OF INTERIM
LEAD CLASS COUNSEL**

) DATE: April 7, 2008

) TIME: 9:00 a.m.

) CRTRM: 8

) JUDGE: Hon. James Ware

1 ALEXANDER H. SCHMIDT, being duly sworn, states:

2 1. I am a member of the Bar of the States of New York and New Jersey, and of the
3 law firm Wolf Haldenstein Adler Freeman & Herz LLP ("Wolf Haldenstein" or "the Firm"). I
4 make this affidavit in support of Plaintiff Kliegerman's cross-motion to appoint Wolf Haldenstein
5 interim lead class counsel in these consolidated actions.

6 2. Wolf Haldenstein was founded in 1888 and has offices in New York City, San
7 Diego, Chicago, and West Palm Beach, Florida. The firm has more than 50 attorneys and its Class
8 Action Litigation Group consists of 35 attorneys and 10 paralegals. Attached hereto as Exhibit 1
9 is a true and correct copy of Wolf Haldenstein's firm resume, which sets forth the Firm's long and
10 extensive experience and expertise in litigating complex class actions, including large consolidated
11 antitrust class actions.

12 3. Wolf Haldenstein has vast experience handling antitrust class actions and will best
13 represent the proposed classes in this case. Wolf Haldenstein is recognized nationwide as one of
14 the Country's premier class actions firms and is in a position to dedicate substantial resources to
15 representing the classes. The Firm has successfully litigated numerous Rule 23 class certification
16 motions around the country, including in this District.

17 4. Wolf Haldenstein has acted as co-lead counsel in several recent antitrust actions,
18 including *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*, No. M 02-1486-
19 PJH (N.D. Cal.); *McDonough v. Toys "R" Us, Inc.*, No. 06-cv-00242-AB (E.D. Pa.); and *In re*
20 *Sulfuric Acid Antitrust Litigation*, No. 03-4576 (N.D. Ill.), and the Firm was appointed as interim
21 class counsel in *In re Elevator Antitrust Litigation*, No. 04-cv-1178-TPG (S.D.N.Y.). Attached
22 hereto as Exhibit 2 for the Court's convenience is a true and correct copy of relevant excerpts of
23 the August 15, 2007 hearing transcript in *In re Dynamic Random Access Memory (DRAM)*
24 *Antitrust Litigation*, No. M 02-1486-PJH (N.D. Cal.).

25 5. Wolf Haldenstein has also played important roles in numerous other antitrust
26 litigations, including *Elliot Franklin v. Smithkline Beecham Corporation d/b/a GlaxoSmithKline,*
27 *P.L.C., et al.*, CA No. 02-10671-RCL (D. Mass.) (Relafen patent monopolization); *In re Carbon*
28 *Black Antitrust Litigation*, No. 03-CV-10191 (D. Mass.) (horizontal price fixing); *In Re Neurontin*
AFFIDAVIT OF ALEXANDER H. SCHMIDT IN SUPPORT OF PLAINTIFF KLIEGERMAN'S CROSS-MOTION
FOR APPOINTMENT OF INTERIM LEAD CLASS COUNSEL - Master File No. C 07-05152 JW

1 *Antitrust Litigation*, MDL No. 1479 (patent monopolization); *Charles D. Fredericks, Jr. v. Elan*
 2 *Corporation, PLC and Skyepharma, Inc. f/k/a Brightstone Pharma, Inc.*, C.A. No. 02-CV-3719
 3 (E.D. Pa.) (Naprelan patent monopolization); *In re Infant Formula Antitrust Litigation*, M.D.L.
 4 878 (N.D. Fla.) (horizontal price fixing); *In re Brand Name Prescription Drug Antitrust Litigation*,
 5 M.D.L. 940 (N.D. Ill.) (same); *In re Cheese Antitrust Litigation*, Case No. 96-C-391 (Circuit Ct.
 6 Ill.) (same).

7 6. I, myself, have had more than 22 years of experience litigating complex
 8 commercial matters, including numerous antitrust actions and class actions. I have served as sole
 9 plaintiffs' counsel in *Dresses for Less v. The CIT Group/Commercial Services, Inc.*, 2002 U.S.
 10 Dist. LEXIS 18338 (S.D.N.Y. Sept. 30, 2002) (group boycott, price-fixing, monopolization in
 11 commercial factoring industry), on the team of co-lead counsel in *Schoenbaum v. E.I. DuPont De*
 12 *Nemours and Company*, No. 4:05-cv-01108-ERW (E.D. Mo.) (price-fixing of genetically-
 13 modified seeds), and as an active steering committee member in *In re Insurance Brokerage*
 14 *Antitrust Litigation*, No. 04-5184-MDL (D.N.J.) (market allocation in insurance industry).

15 7. My partner Mark C. Rifkin, who is also counsel of record in this action, also has
 16 substantial experience litigating antitrust and other complex commercial matters. Mr. Rifkin has
 17 more than 20 years of experience litigating complex commercial matters, including numerous
 18 antitrust and securities class actions in federal and state courts throughout the country. For
 19 example, Mr. Rifkin was lead counsel for the consumer class in the *In re Food Additives (High*
 20 *Fructose Corn Syrup) Cases*, Master File No. 39693 (Cal. Super. Stanislaus County) and was a
 21 member of the Executive Committee in the *In re Travel Agency Commission Antitrust Litig.*, No.
 22 4-95-107 (D. Minn.) He has also served as lead counsel in dozens of class actions in state and
 23 federal courts across the country, including *In re AST Research Securities Litigation*, No. 94-
 24 1370-SVW (C.D. Cal.), which was tried to a jury before the Honorable Steven V. Wilson in the
 25 United States District Court for the Central District of California.

26 8. Wolf Haldenstein has obtained more than \$3.7 billion in settlements of antitrust,
 27 securities, and consumer class actions where it has served as lead counsel or in some other
 28 significant capacity. *See* Exhibit 1 at 31-35.

1 9. Wolf Haldenstein is well-positioned to coordinate the discovery, motion practice,
2 pretrial practice, and trial of these class actions. The Firm has already devoted considerable
3 attorney time and resources into researching this case and will continue to do so until the matter is
4 resolved. The Firm has conducted extensive market research and has engaged a leading antitrust
5 economist with extensive telecommunications experience to assist with the prosecution of this
6 case.

7 10. Wolf Haldenstein already has engaged in many discussions with counsel for
8 defendants Apple and AT&TM, including discussions pertaining to potential settlement of the
9 litigation.

10 11. Wolf Haldenstein has greater resources and far more relevant experience than the
11 other counsel seeking appointment as Interim Lead Class Counsel in this matter.

12 12. Accordingly, I respectfully submit that appointment of Wolf Haldenstein as Interim
13 Lead Class Counsel is appropriate.

14 13. The procedural history of plaintiff Kliegerman's lawsuit is as follows: Plaintiff is a
15 New York resident who purchased three Apple iPhones on July 29, 2007. Plaintiff brought the
16 first filed case against Apple involving the iPhone on August 27, 2007, in New York state court,
17 which was removed to the Southern District of New York on September 27, 2007. On November
18 16, 2007, Plaintiff filed an Amended Complaint asserting, *inter alia*, claims under section 2 of the
19 Sherman Act, the Magnuson-Moss Warranty Act, and numerous state consumer protection
20 statutes. A true and correct copy of the Amended Complaint is attached hereto as Exhibit 3.

21 14. On January 18, 2008, Defendant Apple, Inc. moved to transfer Plaintiff's action to
22 this Court. On February 5, 2008, Plaintiff consented to the transfer of his action to this Court and
23 to the consolidation of his action with the two similar but later-filed actions already pending and
24 consolidated here under the above-caption.

25 15. Attached hereto for the Court's convenience are true and correct copies of the
26 following court opinions:

- 27 1. Exhibit 4: *Smith v. AON Corp.*, No. 04-cv-6875 (N.D. Ill. May 3, 2005)
28 (Doc. No. 47); and

2. Exhibit 5: *In re Copper Tubing Litigation*, No. 04-2771-DV (W.D. Tenn. Feb. 7, 2005) (Doc. No. 56).


ALEXANDER H. SCHMIDT

Sworn to before me this
28th day of February, 2008


Notary Public

RACHEL POPLOCK
Notary Public, State of New York
No. 02PO8170784
Qualified in New York County
Commission Expires July 16, 2011

APPLE:15755